

**UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF OHIO**

PEPARLET CO., LTD,	)	
a Japanese corporation	)	
	)	
THE ANDERSONS, INC.	)	
an Ohio corporation	)	
	)	Civil Action No.
Plaintiff(s)	)	
	)	
v.	)	
	)	
SHEPHERD SPECIALTY PAPERS, INC.,	)	<b>JURY DEMAND</b>
a Michigan corporation	)	
	)	
Defendant(s)	)	

**COMPLAINT FOR PATENT INFRINGEMENT AND BREACH OF CONTACT**

Peparlet Co., Ltd, and The Andersons, Inc., hereby complain of Shepherd Specialty Papers, Inc., and allege as follows:

**JURISDICTION AND VENUE**

1. This action arises under a federal statute 35 U.S.C. § 281 and also the other patent laws of the United States, Title 35 of the United States Code, §§ 1, *et seq.*
2. This Court has subject matter jurisdiction in the action under 28 U.S.C. §§ 1331 and 1338, and 35 U.S.C. § 281. This Court has supplemental jurisdiction under 28 U.S.C. § 1367.
3. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

### **THE PARTIES**

4. Peparlet Co., Ltd. ("Peparlet"), is a corporation organized and existing under the laws of the nation of Japan, having a principal place of business at 422-Shimodoma, Fujieda-shi Shizuoka-Ken, JAPAN 426-0003.

5. The Andersons, Inc. ("The Andersons"), is a corporation organized and existing under the laws of the State of Ohio, having a principal place of business at 480 West Dussell Drive, P.O. Box 119, Maumee, Ohio 43537.

6. Shepherd Specialty Papers, Inc. ("Shepherd") is a Michigan corporation having an address at 10211 M-89 Richland, Michigan 49083, and a registered mailing address of P.O. Box 346, Richland, MI 49083.

### **BACKGROUND ALLEGATIONS**

7. On June 19, 2002, United States Letters Patent No. 6,405,676 ("the '676 patent") was issued on an invention in Discharged Urine or Other Waste Fluids Processing Material for Animals.

8. A true and correct copy of the '676 patent is attached to this Complaint as **Exhibit 1**.

9. Peparlet is the owner, by assignment from the inventor, of all right, title and interest in and to the '676 patent. See **Exhibit 2** – Copy of USPTO Assignment Record.

10. Peparlet owned the '676 patent throughout the period of Shepherd's infringing acts and still owns the patent.

11. The Andersons was the exclusive licensee of the '676 patent throughout the period of Shepherd's infringing acts and is still the exclusive licensee of the '676 patent.

**ALPHA-twist®**

12. On information and belief, Shepherd manufactures rodent enrichment bedding and nesting material that it offers to sell and sells under the product name ALPHA-twist®. See **Exhibit 3** – Shepherd ALPHA-twist® Website Information.

13. Shepherd ALPHA-twist® product is comprised of twisted multi-layered paper that is chopped into short lengths. Once in a cage, rodents unfurl and manipulate them into fluffy nests. Species specific behaviors are nurtured and enhanced through the unrolling of the material for use in nest building. See Exhibit 3.

14. One roll of ALPHA-twist® can be unrolled into a 5 inch strand of paper. See Exhibit 3.

15. One bag of ALPHA-twist® can provide enrichment for over 1400 standard cages. See Exhibit 3.

16. On information and belief, Shepherd sells ALPHA-twist® in 8 pound bags. See Exhibit 3.

17. On information and belief, in 2010 the retail price for an 8 pound bag of ALPHA-twist® was \$41.95.

**ALPHA-dri® + PLUS™**

18. On information and belief, Shepherd manufactures rodent enrichment bedding and nesting material that it offers to sell and sells under the name ALPHA-dri® + PLUS™. See **Exhibit 4** – Shepherd ALPHA-dri® + PLUS™ Website Information.

19. ALPHA-dri® + PLUS™ combines both bedding and nesting materials all in one. Mini-rolls of multi-layered virgin paper cut into short lengths are added to give the animals nesting material which enhances their nest building instincts. See Exhibit 4.

#### **Shepherd's™ Cob + PLUS™**

20. On information and belief, Shepherd manufactures a rodent enrichment bedding and nesting material that it offers to sell and sells under the name Shepherd's™ Cob + PLUS™. See Exhibit 5 – Shepherd's™ Cob + PLUS™ Website Information.

21. Shepherd's™ Cob + PLUS™ combines both bedding and nesting materials all in one. Mini-rolls of multi-layered virgin paper cut into short lengths are added to give the animals nesting material which enhances their nest building instincts. See Exhibit 5.

22. On information and belief, Shepherd has offered to sell and/or sold ALPHA-twist®, ALPHA-dri® + PLUS™ and/or Shepherd's™ Cob + PLUS™ products within this judicial district. See Exhibit 6 – List of Shepherd Sales Representatives and Distributors.

#### **The Prior Lawsuit**

23. In May 2010, Plaintiffs filed Civil Action No. 3:10-cv-1056 against Shepherd in this Court (hereinafter "the prior lawsuit") alleging infringement of the '676 patent as a result of Shepherd's making, importing, using, selling and/or offering for sale in, and to the United States certain products, including but not limited to the ALPHA-twist®, ALPHA-dri® + PLUS™, and Shepherd's™ Cob + PLUS™ products.

24. The prior lawsuit was withdrawn by Plaintiffs pursuant to the terms paragraph 6 of a Settlement Agreement between the parties. A true copy of the Settlement Agreement between the parties for the prior lawsuit is attached as **Exhibit 7**.

25. The settlement agreement provided at paragraph 2 that:

2. All new twisted paper specialty bedding produced, used, sold, offered for sale, or imported by Shepherd shall be manufactured such that the product has a set twisting angle of substantially greater than 180 degrees per centimeter ("new raw product").

See Exhibit 7.

26. On information and belief, Shepherd uses the same twisted paper specialty bedding product in connection with its production of ALPHA-twist®, ALPHA-dri® + PLUS™ and/or Shepherd's™ Cob + PLUS™.

27. On information and belief, the paper specialty bedding product in the ALPHA-twist®, ALPHA-dri® + PLUS™ and/or Shepherd's™ Cob + PLUS™ and products sold by Shepherd include twisted paper specialty bedding product having a set twist angle of less than 180 degrees per centimeter.

**COUNT I – PATENT INFRINGEMENT**

28. Plaintiffs incorporate and reassert paragraphs 1 – 27 herein by reference.

29. Shepherd, upon information and belief, in the past has been and still is infringing United States Letters Patent No. 6,405,676 by making, importing, using, selling and/or offering for sale in, and to, the United States products incorporating the Discharged Urine or Other Waste Fluids Processing Material for Animals embodying the invention of at least claim 5 of the '676 patent, such products including but not being limited to the ALPHA-twist®, ALPHA-dri® + PLUS™ and/or Shepherd's™ Cob + PLUS™.

30. Despite any statement to the contrary, upon information and belief, Shepherd will continue to infringe the '676 patent unless enjoined by this Court.

31. Shepherd had actual knowledge of the '676 patent as a result of the prior lawsuit and the Settlement Agreement.

32. Upon information and belief, Shepherd's infringement of the '676 patent has been willful.

33. Upon information and belief, Shepherd's infringement has resulted in damage to Plaintiffs and will continue to do so unless enjoined by this Court.

34. Plaintiffs have no adequate remedy at law and are, therefore, entitled to an injunction prohibiting further infringement by Shepherd.

35. Shepherd's manufacture, use, sale, offer to sell, and/or distribution products that infringe the '676 patent, including ALPHA-twist®, ALPHA-dri® + PLUS™ and/or Shepherd's™ Cob + PLUS™ have caused Plaintiffs to suffer damages in an amount not yet determined but which will be proven at trial.

**COUNT II – BREACH OF CONTACT**

36. Plaintiffs incorporate and reassert paragraphs 1 – 35 herein by reference.

37. Plaintiffs and Shepherd entered into a Settlement Agreement (see Exhibit 7) in resolution of the prior lawsuit (e.g., Northern District of Ohio Civil Action No. 3:10-cv-1056).

38. The Settlement Agreement between the parties provided at paragraph 2 that "All new twisted paper specialty bedding produced .... by Shepherd shall be manufactured such that the product has a set twisting angle of substantially greater than 180 degrees per centimeter ...".

39. On information and belief, Shepherd breached the Settlement Agreement by producing products, including the ALPHA-twist®, ALPHA-dri® + PLUS™ and/or Shepherd's™ Cob + PLUS™, that have a twisting angle of less than 180 degrees per centimeter.

40. The Settlement Agreement between the parties provided at paragraph 5 that "Shepherd ...will not infringe any claim the '676 Patent."

41. On information and belief, Shepherd breached the Settlement Agreement by producing products, including the ALPHA-twist®, ALPHA-dri® + PLUS™ and/or Shepherd's™ Cob + PLUS™ that infringe at least claim 5 of the '676 patent.

42. On information and belief, Plaintiffs have been damaged as a proximate result of Shepherd's breach of the Settlement Agreement in an amount not yet determined but which will be proven at trial, and will continue to be damaged, unless Shepherd is enjoined by this Court.

43. Plaintiffs have no adequate remedy at law and are, therefore, entitled to a preliminary and/or permanent injunction prohibiting further violation of the Settlement Agreement, infringement by Shepherd and/or specific performance of the Settlement Agreement.

### **RELIEF REQUESTED**

WHEREFORE, Plaintiffs demand that judgment be entered in their favor against Shepherd as follows:

A. Preliminarily enjoin Shepherd, and its officers, agents, servants, employees, attorneys, and all those persons in privity or in active concert or participation with them from further manufacture, importation, sale, offer for sale, and/or use of a product that infringes, contributorily infringes, or induces infringement of the '676 patent;

B. Permanently enjoin Shepherd, and its officers, agents, servants, employees, attorneys, and all those persons in privity or in active concert or participation with them from further acts of infringement of the '676 patent;

C. Order specific performance by Shepherd of the terms of paragraph 2 of the Settlement Agreement;

D. Order an accounting;

E. Award damages adequate to compensate Plaintiffs for Shepherd's infringement of the '676 patent;

F. Increase the damages up to three times the amount found or assessed for Shepherd's willful acts of infringement;



- G. Award damages adequate to compensate Plaintiffs for Shepherd's breach of the Settlement Agreement;
- H. Award prejudgment interest and costs;
- I. Find this to be an exceptional case and awarding reasonable attorney's fees to Plaintiffs; and
- J. Grant all such other and further relief as is necessary and appropriate.

**JURY DEMAND**

Plaintiffs request a jury for all issue triable by jury in this action.

Respectfully submitted,

/s/Mark D. Schneider  
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